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(5)

No. 128, Original

IN THE

Supreme Court of the United States

STATE OF ALASKA,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

On Motion for Leave to File an Amended Complaint

ALASKA'S UNOPPOSED MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT, AMENDED COMPLAINT, AND BRIEF IN SUPPORT OF MOTION

Of Counsel:

JOHN G. ROBERTS, JR.
JONATHAN S. FRANKLIN
HOGAN & HARTSON L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004
(202) 637-5810

G. THOMAS KOESTER
2550 Fritz Cove Road
Juneau, Alaska 99801
(907) 789-6818

* Counsel of Record

BRUCE M. BOTELHO
Attorney General
JOANNE M. GRACE *
LAURA C. BOTTGER
Assistant Attorneys General
STATE OF ALASKA
Department of Law
1031 W. Fourth Avenue
Anchorage, Alaska 99501
(907) 269-5100

Counsel for Plaintiff

F/D

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Article 7 of the International Convention on the Territorial Sea and the Contiguous Zone

IN THE

Supreme Court of the United States

No. 128, Original

STATE OF ALASKA,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

UNOPPOSED MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT

Pursuant to S. Ct. Rule 17, the State of Alaska, through its Attorney General, asks leave of the Court to file an amended complaint against the United States to quiet title to the lands underlying marine waters in Southeast Alaska. This motion is accompanied by an amended complaint and supporting brief.

Respectfully submitted,

Of Counsel:

JOHN G. ROBERTS, JR.
JONATHAN S. FRANKLIN
HOGAN & HARTSON L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004
(202) 637-5810

G. THOMAS KOESTER
2550 Fritz Cove Road
Juneau, Alaska 99801
(907) 789-6818

* Counsel of Record

BRUCE M. BOTELHO
Attorney General
JOANNE M. GRACE *
LAURA C. BOTTGER
Assistant Attorneys General
STATE OF ALASKA
Department of Law
1031 W. Fourth Avenue
Anchorage, Alaska 99501
(907) 269-5100

Counsel for Plaintiff

IN THE

Supreme Court of the United States

No. 128, Original

STATE OF ALASKA,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

AMENDED COMPLAINT TO QUIET TITLE

The State of Alaska, plaintiff, alleges as follows:

1. This is an action to quiet title to the tide and submerged lands in Southeast Alaska. These include the submerged lands within the Alexander Archipelago of Southeast Alaska that are enclosed behind the closing lines drawn by the United States to mark the seaward limit of inland waters at the 1903 Alaska Boundary Tribunal arbitration, together with the submerged lands extending three miles seaward from that line and from the remainder of Southeast Alaska's coast line (as shown on the map at Exhibit ("Ex.") 1*); or alternatively, the submerged lands underlying the inland waters of the juridical bays within the Alexander Archipelago (as shown on the map at Ex. 2), together with the submerged lands extending three miles seaward from any juridical bay closing

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* Exhibits referenced herein are appended to the accompanying Brief in Support of Unopposed Motion for Leave to File an Amended Complaint.

lines or baselines, and from the remainder of Southeast Alaska's coast line.

2. This Court has jurisdiction under Article III, Section 2, Clause 2, of the United States Constitution and 28 U.S.C. § 1251(b)(2).

3. The United States consented to this action in 28 U.S.C. § 2409a(a). Alaska gave the United States written notice of its intent to file suit to quiet title to these lands on or about August 21, 1998 and March 22, 1999, as required by 28 U.S.C. § 2409a(m).

Count I: Historic Waters of the Alexander Archipelago

4. Upon admission to the Union on an equal footing with the other States, a new State succeeds to the United States' title to lands underlying navigable inland waters within its boundaries as an incident of its sovereignty.

5. Alaska was admitted to the Union "on an equal footing with the other States in all respects whatever" on January 3, 1959. Alaska Statehood Act § 1, Pub. L. No. 85-508, 48 U.S.C. note prec. § 21.

6. Under the equal footing doctrine, Alaska succeeded to the United States' title to lands underlying navigable inland waters within Alaska's boundaries as an incident of statehood.

7. From at least 1903 until 1971, the United States took the position in its international relations and in litigation with the States in this Court that the waters of the Alexander Archipelago were inland waters, including the pockets and enclaves that are more than three miles from the coast line of the mainland and any of the islands and enclosed behind the closing lines drawn by the United States to mark the seaward limit of inland waters at the 1903 Alaska Boundary Tribunal arbitration (hereinafter "pockets and enclaves"). These pockets and enclaves are depicted in red on the map at Ex. 1.

8. Foreign nations acquiesced in the United States' claim that the waters of the Alexander Archipelago were inland waters, including the pockets and enclaves.

9. All of the submerged lands within these pockets and enclaves underlie navigable historic inland waters.

10. Because all of the submerged lands within the pockets and enclaves underlie navigable historic inland waters, Alaska took title to them upon its admission to the Union under the equal footing doctrine.

11. Congress both confirmed the equal footing doctrine rule of State ownership of lands underlying navigable inland waters and quitclaimed to the States the offshore submerged lands within state boundaries in the Submerged Lands Act of 1953, 43 U.S.C. §§ 1301-1315.

12. Congress made the Submerged Lands Act applicable to Alaska in Section 6(m) of the Alaska Statehood Act.

13. Congress defined Alaska's boundaries as coextensive with the three-mile territorial sea claimed by the United States at the time of Alaska's admission to the Union on January 3, 1959.

14. The United States claims an interest in the submerged lands within the pockets and enclaves, and also claims the submerged lands extending three miles seaward of the closing lines drawn by the United States to mark the seaward limit of inland waters at the 1903 Alaska Boundary Tribunal arbitration (hereinafter "1903 closing lines") where the submerged lands are more than three nautical miles from any point on the coast line of the mainland or any of the islands. The latter areas are depicted in dark blue on the map at Ex. 1.

15. Because the submerged lands within the pockets and enclaves and extending three miles seaward of the 1903 closing lines passed to Alaska at statehood under the equal

footing doctrine and the Submerged Lands Act, the United States has no right, title, or interest in those lands.

16. On or about September 10, 1907, President Theodore Roosevelt reserved by proclamation an area of Southeast Alaska as the Tongass National Forest.

17. In 1908, President Theodore Roosevelt consolidated the Tongass National Forest with the Alexander Archipelago Forest Reserve and named the new entity Tongass National Forest.

18. On or about February 16, 1909, President Theodore Roosevelt enlarged the Tongass National Forest.

19. On or about June 10, 1925, President Calvin Coolidge again enlarged the Tongass National Forest. See Ex. 2 (map with the 1925 enlargement and resulting outer boundaries of the Tongass National Forest).

20. Although the pockets and enclaves and the submerged lands extending three miles seaward of the 1903 closing lines are within the outer boundaries of the Tongass National Forest shown on the map at Ex. 2, the reservation of lands within these boundaries did not reserve the submerged lands therein or defeat Alaska's title to them at statehood.

21. Alaska's title is adverse to and clouded by the United States' claim of title to the lands underlying the pockets and enclaves and the waters extending three miles seaward of the 1903 closing lines where the submerged lands are more than three miles from any point on the coast line of the mainland or any of the islands.

22. Unless this Court declares and establishes Alaska's rights, Alaska will continue to be injured by the United States' claims to the lands underlying the pockets and enclaves and the waters extending three miles seaward of the 1903 closing lines where the submerged lands are more than

three miles from any point on the coast line of the mainland or any of the islands.

Count II: The Juridical Bay Status of the Waters of the Alexander Archipelago

23. Paragraphs 1-6, 11-13, and 16-19 are realleged and incorporated by reference.

24. The submerged lands underlying any juridical bay and enclosed behind closing or base lines drawn in accordance with Article 7 of the International Convention on the Territorial Sea and the Contiguous Zone (hereinafter "Convention"), Sept. 10, 1964, 15 U.S.T. 1607, T.I.A.S. No. 5639, are inland waters, and any such juridical bay closing or base lines constitute the coastline (or seaward limits of inland waters) within the meaning of the Submerged Lands Act.

25. Regardless of their historic inland water status, the waters within the Alexander Archipelago are inland (or internal) waters because the area comprises two smaller and two larger juridical bays, whose waters are enclosed behind closing or base lines drawn in accordance with Article 7 of the Convention (hereinafter "juridical bay closing lines").

26. Sitka Sound and Cordova Bay constitute the two smaller juridical bays. *See* Ex. 2 (the locations of Sitka Sound and Cordova Bay are labeled on the graphic, but are not otherwise highlighted).

27. The area between Cape Spencer and the southern or eastern entrance point to Chatham Strait constitutes one of the larger juridical bays, hereinafter "North Southeast." *See* Ex. 2 ("North Southeast" area depicted in green). Another larger juridical bay lies between the northern or western entrance point to Sumner Strait and Cape Fox, hereinafter "South Southeast." *See* Ex. 2 ("South Southeast" area depicted in purple).

28. Each bay is composed of a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain landlocked waters and constitute more than a mere curvature of the coast.

29. For each bay, islands that serve to form the indentation may be assimilated to the mainland.

30. Each bay contains an area as large or larger than that of a semi-circle whose diameter is the length of the line or sum length of the lines drawn across the mouth or mouths of the indentation, considering that islands within an indentation may be considered as part of the water area of the indentation. Islands within the indentation or creating more than one mouth under Article 7(3) of the Convention are depicted in gray on Exhibit 2.

31. Each bay contains inland waters that are enclosed by a closing line or lines, drawn between the natural entrance points, whose aggregate length does not exceed 24 nautical miles, or that are enclosed by 24 nautical mile baselines that may be drawn landward of the natural entrance points. Exhibit 2 depicts approximate juridical bay closing or base lines for the two larger juridical bays.

32. In the alternative, the area described above as "South Southeast" comprises more than one juridical bay.

33. Each of the juridical bays of "South Southeast" is composed of a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain landlocked waters and constitute more than a mere curvature of the coast.

34. For each of the juridical bays of "South Southeast", islands that serve to form the indentation may be assimilated to the mainland.

35. Each of the juridical bays of "South Southeast" contains an area as large or larger than that of a semi-circle whose

diameter is the length of the line or sum length of the lines drawn across the mouth or mouths of the indentation, considering that islands within an indentation may be considered as part of the water area of the indentation.

36. Each of the juridical bays of "South Southeast" contains inland waters that are enclosed by a closing line or lines, drawn between the natural entrance points, whose aggregate length does not exceed 24 nautical miles, or that are enclosed by 24 nautical mile baselines that may be drawn landward of the natural entrance points.

37. The United States claims an interest in those submerged lands enclosed behind the juridical bay closing lines that are more than three miles from the coast line of the mainland and any of the islands, and also claims an interest in those submerged lands extending three miles seaward of the juridical bay closing lines where the submerged lands are more than three nautical miles from any point on the coast line of the mainland or any of the islands.

38. All of the submerged lands enclosed behind the juridical bay closing lines, and all of the submerged lands extending three miles seaward of the juridical bay closing lines, passed to Alaska at statehood under the equal footing doctrine and the Submerged Lands Act. Accordingly, the United States has no right, title, or interest in those lands.

39. The submerged lands enclosed behind the juridical bay closing lines, and the submerged lands extending three miles seaward of the juridical bay closing lines, are within the outer boundaries of the Tongass National Forest shown on the map at Ex. 3. The reservation of lands within these boundaries, however, did not reserve the submerged lands therein or defeat Alaska's title to them at statehood.

40. Alaska's title is adverse to and clouded by the United States' claim of title to those submerged lands enclosed behind the juridical bay closing lines that are more than three

miles from the coast line of the mainland and any of the islands, and the submerged lands extending three miles seaward of the juridical bay closing lines where the submerged lands are more than three miles from any point on the coast line of the mainland or any of the islands.

41. Unless this Court declares and establishes Alaska's rights, Alaska will continue to be injured by the United States' claim to those submerged lands enclosed behind the juridical bay closing lines that are more than three miles from the coast line of the mainland and any of the islands, and the submerged lands extending three miles seaward of the juridical bay closing lines where the submerged lands are more than three miles from any point on the coast line of the mainland or any of the islands.

Count III: The Tongass National Forest

42. Paragraphs 1-6, 11-13, and 16-19 are realleged and incorporated by reference.

43. Alaska took title to all lands between mean high and mean low tide and three miles seaward from the coast line inside the boundaries of the Tongass National Forest when it entered the union on January 3, 1959. *See* Ex. 3 (map showing boundaries).

44. Although the lands described in paragraph 43 are within the lines delimiting the public lands withdrawn and reserved for the Tongass National Forest, the withdrawal and reservation of lands within the boundaries did not reserve or defeat Alaska's title to those submerged lands.

45. Because Alaska took title to the lands between mean high and mean low tide and three miles seaward from the coast line inside the boundaries of the Tongass National Forest at statehood, the United States has no right, title, or interest in those lands.

46. The United States claims an interest in these lands that is disputed by Alaska and creates a cloud on Alaska's title to them.

47. The United States' claims to these lands will continue to cloud Alaska's title unless this Court declares and establishes Alaska's rights.

Count IV: Glacier Bay National Monument

48. Paragraphs 1-6 and 11-13 are realleged and incorporated by reference.

49. On or about February 26, 1925, President Calvin Coolidge created Glacier Bay National Monument by issuing Proclamation 1733 under the authority of the Antiquities Act of 1906, 34 Stat. 223, 16 U.S.C. §§ 431-433.

50. The President set apart as Glacier Bay National Monument "the tract of land" lying within the boundaries described in the 1925 order. *See* Ex. 4 (1939 map depicting 1925 boundaries in purple).

51. The Antiquities Act permits the President "to declare * * * historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest * * * to be national monuments," but permits the reservation of only "the smallest area compatible with the proper care and management of the objects to be protected." 16 U.S.C. § 431.

52. The primary purpose of the 1925 creation of Glacier Bay National Monument was to preserve the land left bare by the retreat of tidewater glaciers for study of the development of flora and fauna.

53. The President did not intend to include as part of the monument the lands underlying marine waters within the boundary described in Proclamation 1733.

54. Given the purposes of the monument, the President's authority to withdraw and reserve lands under the Antiquities

Act did not extend to the submerged lands within the boundaries described by the 1925 reservation order.

55. On or about April 18, 1939, President Franklin D. Roosevelt expanded the area of Glacier Bay National Monument by issuing Proclamation 2330 under the authority of the Antiquities Act.

56. The Proclamation added to Glacier Bay National Monument certain public lands, including lands simultaneously excluded from the Tongass National Forest. *See* Ex. 4 (lands transferred from the Tongass National Forest to Glacier Bay National Monument depicted between the red and green lines).

57. The primary purposes of the 1939 expansion of Glacier Bay National Monument were to set aside a refuge for brown bears and to preserve a coastal forest.

58. The lands underlying marine waters within the 1939 boundary of the newly expanded monument were unrelated to the purposes of a bear refuge and a forest preserve and therefore exceeded "the smallest area compatible with the proper care and management of the objects to be protected." 16 U.S.C. § 431.

59. The President did not intend to include as part of the monument the lands underlying marine waters within the boundaries described in Proclamation 2330.

60. The President's authority to reserve lands under the Antiquities Act did not extend to the submerged lands within the boundaries described by the 1939 proclamation.

61. The State of Alaska took title to all the lands underlying marine waters within the boundaries of Glacier Bay National Monument at statehood, pursuant to the Equal Footing Doctrine and the Submerged Lands Act.

62. The United States' claim of title to the lands underlying marine waters within the boundaries of Glacier Bay National Monument as they were drawn at statehood is adverse to and disputed by Alaska and creates a cloud on Alaska's title to those lands.

63. The United States' claim of title to these lands will continue to cause injury to Alaska unless this Court declares and establishes Alaska's rights.

PRAYER FOR RELIEF

Alaska prays that the Court require the United States to answer Alaska's Amended Complaint and that, after due proceedings, the Court enter a decree declaring the rights of Alaska as against the United States in the submerged lands within the Alexander Archipelago of Southeast Alaska that are enclosed behind the closing lines drawn by the United States to mark the seaward limit of inland waters at the 1903 Alaska Boundary Tribunal Arbitration or enclosed behind the juridical bay closing lines, together with the submerged lands extending three miles seaward from such lines and the remainder of Southeast Alaska's coast line, and enjoining the United States, its privies, assigns, lessees, and other persons claiming under it from interfering with the rights of Alaska, as well as award Alaska any other relief the Court may deem just and appropriate.

Respectfully submitted,

Of Counsel:

JOHN G. ROBERTS, JR.
JONATHAN S. FRANKLIN
HOGAN & HARTSON L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004
(202) 637-5810

G. THOMAS KOESTER
2550 Fritz Cove Road
Juneau, Alaska 99801
(907) 789-6818

* Counsel of Record

BRUCE M. BOTELHO
Attorney General
JOANNE M. GRACE *
LAURA C. BOTTGER
Assistant Attorneys General
STATE OF ALASKA
Department of Law
1031 W. Fourth Avenue
Anchorage, Alaska 99501
(907) 269-5100

Counsel for Plaintiff

IN THE

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BRIEF IN SUPPORT OF UNOPPOSED MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT

Of Counsel:

JOHN G. ROBERTS, JR.
JONATHAN S. FRANKLIN
HOGAN & HARTSON L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004
(202) 637-5810

G. THOMAS KOESTER
2550 Fritz Cove Road
Juneau, Alaska 99801
(907) 789-6818

* Counsel of Record

BRUCE M. BOTELHO
Attorney General
JOANNE M. GRACE *
LAURA C. BOTTGER
Assistant Attorneys General
STATE OF ALASKA
Department of Law
1031 W. Fourth Avenue
Anchorage, Alaska 99501
(907) 269-5100

Counsel for Plaintiff

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BRIEF IN SUPPORT OF UNOPPOSED MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT

The State of Alaska, through its Attorney General, submits this brief in support of its Unopposed Motion for Leave to File an Amended Complaint. The amended complaint includes a new count asserting title based on a juridical bay theory of inland water status for the waters of Alexander Archipelago in Southeast Alaska. The United States has authorized Alaska to state that while the United States disputes the merits of Alaska's claims, it does not oppose granting the motion for leave to file an amended complaint.

STATEMENT OF JURISDICTION

This Court has jurisdiction pursuant to Article III, § 2, cl. 2 of the United States Constitution and 28 U.S.C. § 1251(b)(2).

PROCEDURAL HISTORY

Alaska filed its Motion for Leave to File a Complaint and Brief in Support of its Motion with the Court on November 24, 1999. In its complaint, Alaska sets forth a quiet title action against the United States, which seeks to establish ownership of the tide and submerged lands within the Alexander Archipelago of Southeast Alaska. Count I of the complaint asserts that title to the submerged lands underlying the marine waters of the area passed to the state under the equal footing doctrine as historic inland waters. Counts II and III of the initial complaint allege that the submerged lands between mean high tide and three miles seaward of the coast line and within the exterior boundaries of the Tongass National Forest and Glacier Bay National Monument, respectively, passed to the state at statehood under the equal footing doctrine and Submerged Lands Act. In its brief in support of its motion for leave to file its complaint, Alaska's primary argument was that the Court has historically exer-

cised and even preferred original jurisdiction to resolve coastal boundary disputes such as that presented by Alaska.

In its brief in response, the United States agreed with Alaska that leave should be granted to permit Alaska to file its bill of complaint because of the type of issues raised. After hearing from Alaska in reply, the Court, on June 9, 2000, granted leave for Alaska to file its bill of complaint. The United States filed its answer on August 25, 2000. On October 16, 2000, the Court appointed Professor Gregory E. Maggs to serve as Special Master. No substantive proceedings have yet taken place before the Special Master.

Alaska appreciates that the Court has appointed a Special Master in this case with "authority to fix the time and conditions for the filing of additional pleadings and to direct subsequent proceedings." October 16, 2000 Order. But because Alaska's request for leave to file its amended complaint is a matter that goes to the Court's jurisdiction, Alaska has filed its request with the Court in the first instance.

REASONS FOR GRANTING LEAVE TO FILE AN AMENDED COMPLAINT

The first count advanced in Alaska's original complaint alleges that the marine areas within the Alexander Archipelago of Southeast Alaska passed to the State of Alaska as historic inland waters under the equal footing doctrine. These areas include those enclosed behind the closing lines (not exceeding 10 miles) described by the United States at the 1903 Alaska Boundary Tribunal as forming the "political coastline" around the outside of the archipelago. *See* Ex. 1 to both the original and the amended complaint. Additional study and consultation with experts retained since the Court granted Alaska leave to file its complaint have led Alaska to conclude that its position is also supported by a juridical bay theory. As a result, Alaska now seeks to amend its complaint in order to permit its use of a juridical bay theory as an

alternative to the historic waters claim to resolve Alaska's claim to title.[1]

Given that no substantive proceedings have occurred in this case since the Court accepted jurisdiction, this request for leave to amend is timely and will not prejudice the United States. While the Court has granted leave to amend years after the filing of the original pleadings, *Nebraska* v. *Wyoming*, 515 U.S. 1, 12, 13 (1995), this litigation is still at an early stage. The Special Master was only recently appointed, no discovery has yet been taken, and the additional count can readily be incorporated into the case management plan currently under development. *See* Ex. 5 (Case Management Order No. 2). Furthermore, the amendment would not change the nature of this case and fully comports with the standards governing juridical bay claims.

This Court has held that leave to amend a complaint within the Court's original jurisdiction will be granted so long as the amendment would not "take the litigation beyond what [was] reasonably anticipated when [the Court] granted leave to file the initial pleadings." *Nebraska* v. *Wyoming*, 515 U.S. at 8. The proposed amended complaint would not do so. The amended complaint does not alter the nature of this case as one seeking to quiet title to the lands underlying the marine waters in Southeast Alaska, nor does it expand the disputed lands to which Alaska asserts title.[2] Both the original and

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[1] Alaska also seeks quiet title to the three mile belt of territorial sea measured from the closing lines attained under either theory. *See* Complaint ¶ 15 (Count I); Amended Complaint ¶ 15 (Count I), ¶ 38 (Count II). But such claim to areas of territorial sea under the Submerged Lands Act, 43 U.S.C. § 1312, needs no separate discussion since it is wholly dependant on the success of Alaska's claim of title under the inland water theories.

[2] There is not a perfect identity between the closing or baselines marking the seaward limits of inland waters under the historic waters theory and juridical bay theory. But the minor differences

amended complaints seek title to the submerged lands underlying the Alexander Archipelago on the grounds that they comprise inland waters which passed to Alaska at statehood under the equal footing doctrine as an attribute of sovereignty. The only difference between the two complaints is that the amended complaint, in addition to asserting in Count I that the waters of the Alexander Archipelago are inland waters based on the United States' assertion and maintenance of dominion over the area, also asserts in Count II the alternative theory that the inland water status is dictated by the geographic configuration of the area, which satisfies the criteria set for juridical bays.[3]

Permitting Alaska to amend its complaint to put before the Court both theories of inland water status to support its claim of title to the disputed areas does not ask the Court to consider a matter of any less import than that supporting its initial decision to accept Alaska's case under its original jurisdiction. Alaska's sovereign interest in the lands underlying inland waters is the same under both counts I and II of the amended complaint. Permitting the amendment would also comport with the Court's past practice in other coastal boundary disputes within its original jurisdiction, in which the Court has considered both historic and juridical bay theories together. *See, e.g., United States* v. *Louisiana (Alabama & Mississippi Boundary Case)*, 470 U.S. 93, 100-101 (1985);

in the areas claimed are not such that adding the juridical bay claim would take the litigation of Alaska's title dispute beyond consideration of the waters of the Alexander Archipelago in Southeast Alaska, a matter the Court has already elected to decide.

[3] The historic claim to the area of the Alexander Archipelago is of course not divorced from its geography. But a claim of historic title to an area need not satisfy the particular or precise geographic test applied to juridical bays. *See United States* v. *Louisiana (Louisiana Boundary Case)*, 394 U.S. 11, 23 (1969); International Convention on the Territorial Sea and the Contiguous Zone, Sept. 10, 1964, 15 U.S.T. 1607, T.I.A.S. No. 5639.

United States v. *Maine*, 469 U.S. 504, 509 (1985); *United States* v. *Louisiana*, 420 U.S. 529 (1975); *United States* v. *California*, 381 U.S. 139, 169-170, 172 (1965). As in those cases, the interest of judicial economy would be furthered by considering both claims together in this case.

The Court has already agreed to hear Alaska's claim that the waters of the Alexander Archipelago are inland waters based on their historic treatment. Alaska seeks to establish, in the alternative, that these same waters are inland waters based on their geography. Both claims call upon the special expertise this Court has developed in resolving coastal boundary disputes between States and the Federal Government. This Court has held that juridical bay claims are governed by the standards in Article 7 of the International Convention on the Territorial Sea and the Contiguous Zone (the "Convention"), Sept. 10, 1964, 15 U.S.T. 1607, T.I.A.S. No. 5639 (reproduced in the Appendix hereto). *See United States* v. *Maine*, 469 U.S. at 514-520 (adopting and applying Article 7); *United States* v. *California,* 381 U.S. at 163-165 (same); *Louisiana Boundary Case*, 394 U.S. at 16, 35 (same). The amended complaint alleges that the bays of Southeast Alaska, denoted on Exhibit 2, feature the requisite geographic characteristics to satisfy the standards of the Convention, because each of the areas is a well-marked deeply penetrating indentation containing landlocked waters that passes the Convention's "semi-circle" test. *See* Convention, art. 7(2), 7(3); Amended Complaint ¶¶ 28, 30, 33, 35. Moreover, the complaint alleges that islands can be assimilated to the mainland so as to form part of the headlands to the bays. *See Louisiana Boundary Case*, 394 U.S. at 60-66; *United States* v. *Maine*, 469 U.S. at 514-520; Amended Complaint ¶ 29, 34. Finally, the complaint alleges that all the disputed waters are inland waters under the Convention because they can be enclosed behind closing lines totaling no more than 24 miles. *See* Convention, art. 7(4), 7(5); Amended Complaint ¶¶ 31, 36; *see also* Convention, art. 5(1). Alaska therefore

seeks to present proof on these issues in order to ensure that its sovereign interest in the area is fully recognized.

CONCLUSION

In this original action, Alaska's complaint has put before the Court the important question of whether the waters of the Alexander Archipelago are properly considered inland waters that passed to the state under the equal footing doctrine. The proposed addition of the juridical bay count would merely add a second inland water theory and permit Alaska the chance to present additional evidence to answer that general question. Because Alaska's claim to title based on a juridical bay theory raises the same important sovereign concerns as its pending historic waters claim, is addressed to the same general area, and even asks the same general question, leave to amend the complaint should be granted.

Respectfully submitted,

Of Counsel:

JOHN G. ROBERTS, JR.
JONATHAN S. FRANKLIN
HOGAN & HARTSON L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004
(202) 637-5810

G. THOMAS KOESTER
2550 Fritz Cove Road
Juneau, Alaska 99801
(907) 789-6818

* Counsel of Record

BRUCE M. BOTELHO
Attorney General
JOANNE M. GRACE *
LAURA C. BOTTGER
Assistant Attorneys General
STATE OF ALASKA
Department of Law
1031 W. Fourth Avenue
Anchorage, Alaska 99501
(907) 269-5100

Counsel for Plaintiff

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Page

1. Map depicting the pockets and enclaves more than three miles from the shore of the mainland and any islands in Southeast Alaska and the closing lines drawn by the United States to mark the seaward limit of inland waters at the 1903 Alaska Boundary Tribunal arbitration..... 1e

2. Map depicting the juridical bays of Southeast Alaska..... 2e

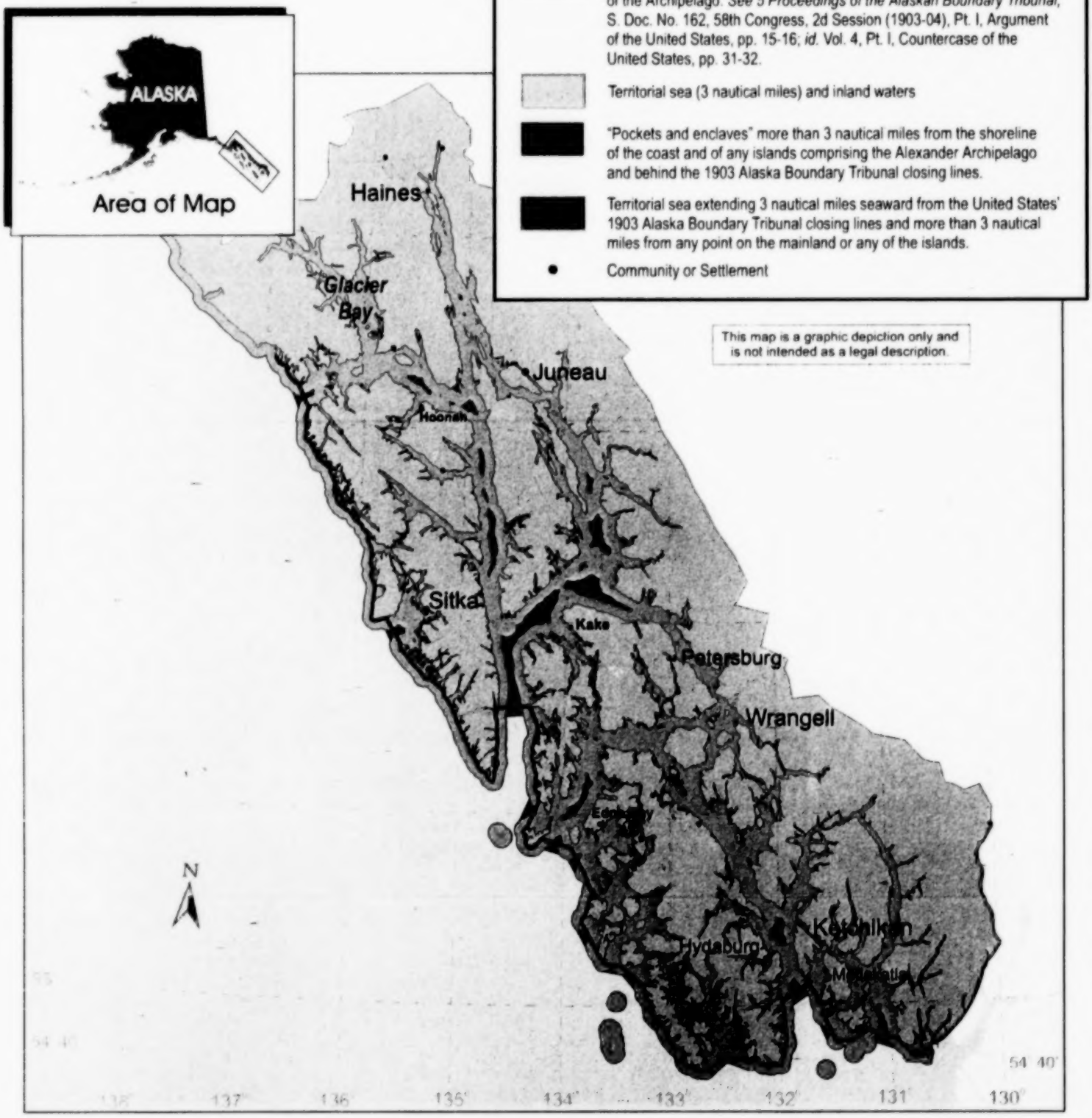
3. 1925 map depicting the boundaries of and the 1925 expansion of the Tongass National Forest ... 3e

4. 1939 map depicting the original Glacier Bay National Monument Boundaries and the 1939 expansion..... 4e

5. Case Management Order No. 2 (Nov. 6, 2000)..... 5e

EXHIBIT 1

Historic Waters of Alexander Archipelago



Graphic depiction of closing lines drawn by the United States at the 1903 Boundary Tribunal to mark the seaward limits of the inland waters of the Archipelago. *See 5 Proceedings of the Alaskan Boundary Tribunal*, S. Doc. No. 162, 58th Congress, 2d Session (1903-04), Pt. I, Argument of the United States, pp. 15-16; *id.* Vol. 4, Pt. I, Countercase of the United States, pp. 31-32.

Territorial sea (3 nautical miles) and inland waters

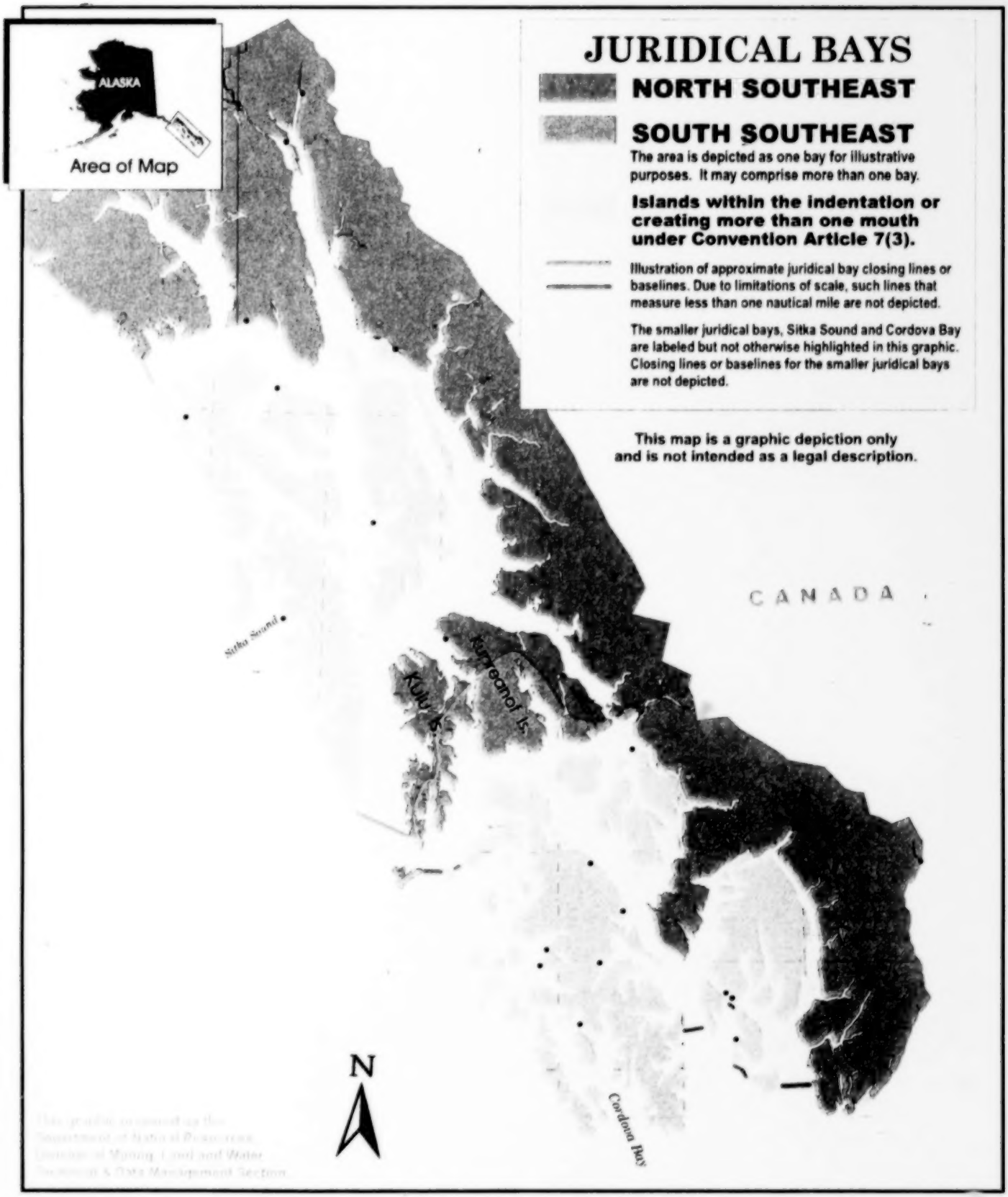
"Pockets and enclaves" more than 3 nautical miles from the shoreline of the coast and of any islands comprising the Alexander Archipelago and behind the 1903 Alaska Boundary Tribunal closing lines.

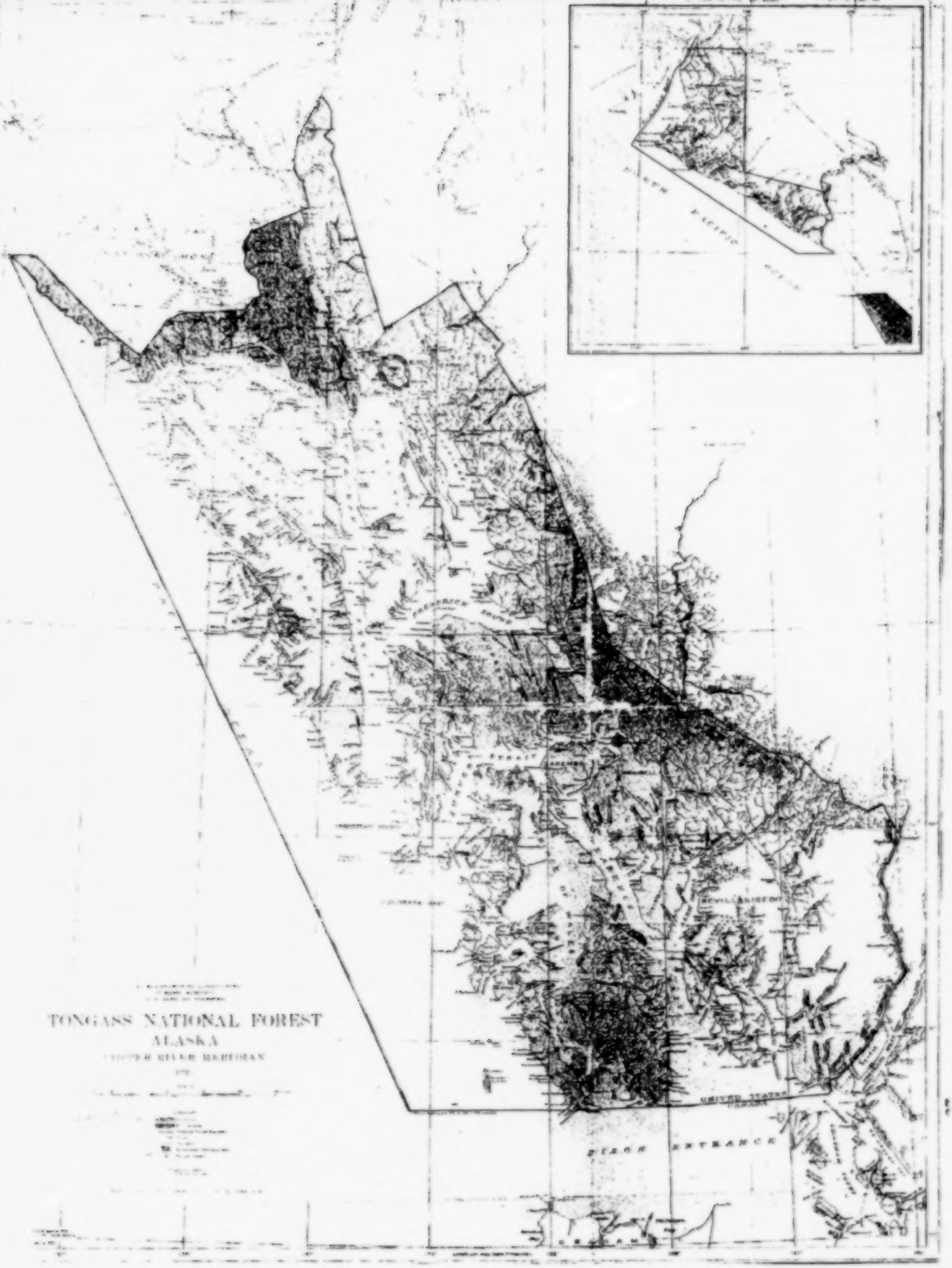
Territorial sea extending 3 nautical miles seaward from the United States' 1903 Alaska Boundary Tribunal closing lines and more than 3 nautical miles from any point on the mainland or any of the islands.

Community or Settlement

This map is a graphic depiction only and is not intended as a legal description.

Prepared by the Department of Natural Resources, Division of Mining, Land & Water - Technical & Data Management Section ***October, 1999***


ALASKA
Area of Map
JURIDICAL BAYS
NORTH SOUTHEAST
SOUTH SOUTHEAST
The area is depicted as one bay for illustrative purposes. It may comprise more than one bay.
Islands within the indentation or creating more than one mouth under Convention Article 7(3).
Illustration of approximate juridical bay closing lines or baselines. Due to limitations of scale, such lines that measure less than one nautical mile are not depicted.
The smaller juridical bays, Sitka Sound and Cordova Bay are labeled but not otherwise highlighted in this graphic. Closing lines or baselines for the smaller juridical bays are not depicted.
This map is a graphic depiction only and is not intended as a legal description.
CANADA
Sitka Sound
Kuiu I.
Kupreanof Is.
Cordova Bay
N



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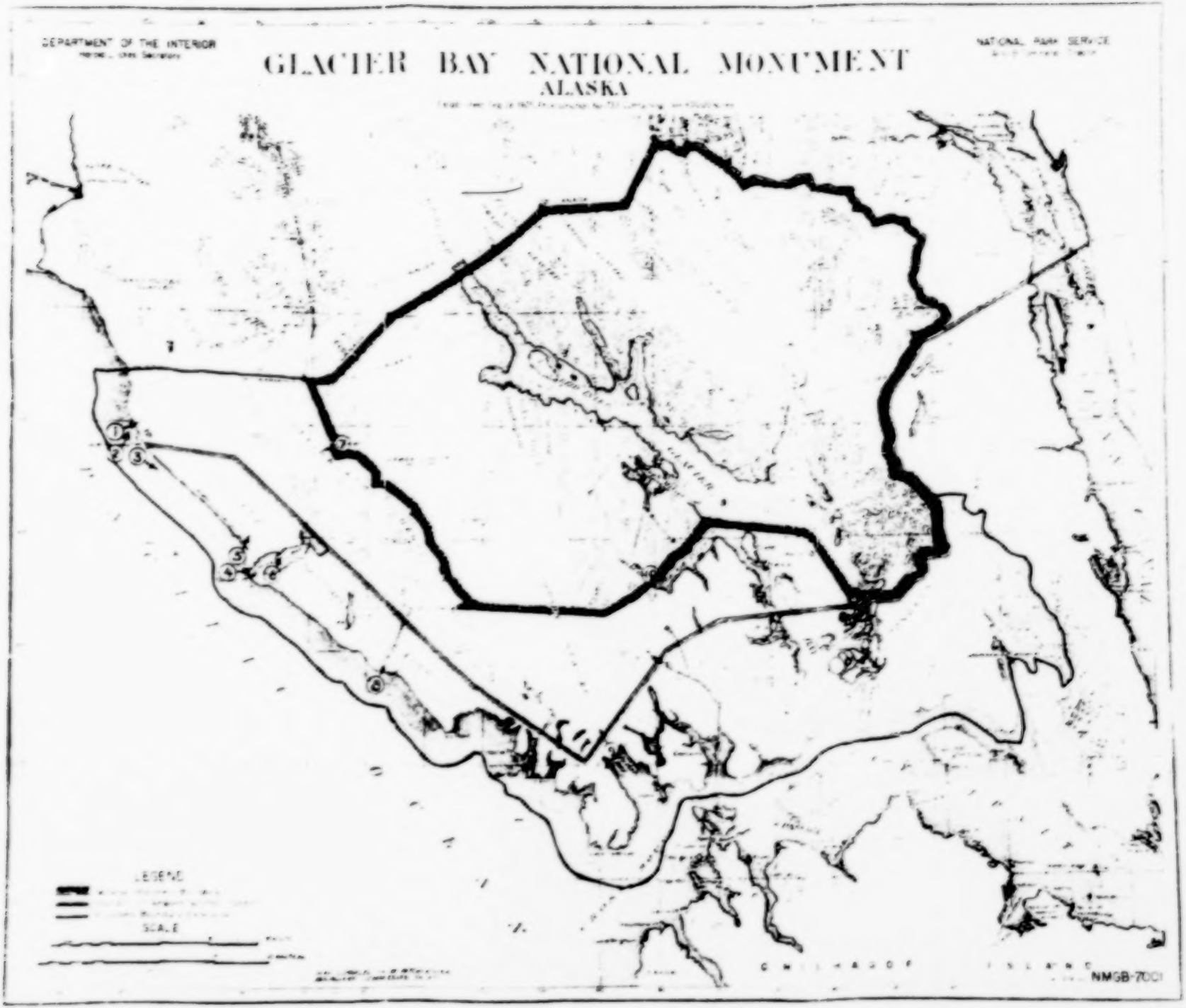
DEPARTMENT OF THE INTERIOR
GLACIER BAY NATIONAL MONUMENT
ALASKA
NATIONAL PARK SERVICE
LEGEND
SCALE
NMGB-7001

EXHIBIT 5

SUPREME COURT OF THE UNITED STATES
No. 128, Original

STATE OF ALASKA,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

CASE MANAGEMENT ORDER NO. 2

For the purposes of the proceedings before the Special Master, IT IS HEREBY ORDERED THAT:

(1) Revised Distribution List for Service of Documents. A revised Distribution List for Service of Documents appears in the Appendix to this order. Please note the following amendments:

(a) Ms. Joanne M. Grace, Assistant Attorney General for the State of Alaska, now has the following fax number: (907) 279-2834.

(b) Documents now will be sent to the Special Master's legal assistant, who has the following address:

Mr. Paul Rosenzweig
Rosenzweig Law Office, LLP
516 C Street N.E., Suite 300
Washington, DC 20002

Tel. (202) 543-9370
Fax. (202) 543-9372

(2) Method of Distributing Documents. When distributing documents, the parties and the Special Master will send two copies of each document to each of the attorneys on the Distribution List for Service of Documents. The parties will send all documents by "standard overnight" delivery whenever possible, recognizing that "standard overnight" service to or from Alaska may not be available or may take more than one day. If "standard overnight" delivery is not available to a particular location, the parties will use the next fastest available delivery alternative. To prevent loss or misplacement of documents, the parties and the Special Master will not send documents by facsimile or email absent exceptional circumstances.

(3) Case Management Plan. The parties will draft and distribute a proposed Case Management Plan by January 16, 2001. In drafting the proposed plan, the parties will, to the extent that it is applicable, use as a guide the Comprehensive Case Management Plan adopted in No. 126, Original, Kansas v. Nebraska and Colorado. If the parties are unable to agree on a particular issue in drafting the Case Management Plan, each side will offer its own proposal for resolving the issue, and each side will briefly state its objections to the other side's proposal.

(4) List of Principal and Subsidiary Issues. To facilitate discovery and future planning, the parties will draft and distribute by January 16, 2001, a list of the principal issues to be decided by the Special Master, and so many of the subsidiary issues as the parties are able to identify at that time. If the parties cannot reach full agreement, they will note their disagreements. Although the parties should strive to make the list as comprehensive as information will allow, failure to include an issue on the list will not prevent the parties from raising the issue later. To the extent that the parties cannot

fully identify all subsidiary issues to be decided by the Special Master, they shall provide a time table for their identification in the proposed Case Management Plan.

(5) Timing of Case Status Conference No. 2. Prior to January 1, 2001, the parties will provide the Special Master a list of proposed dates and times in February for holding Case Status Conference No. 2 in Washington, D.C. At Case Status Conference No. 2, the parties and the Special Master will discuss the proposed Case Management Plan, the list of Principal and Subsidiary Issues, and other topics that may arise. Please note that the Special Master cannot meet on Wednesday, Thursday, and Friday mornings.

(6) Amicus Parties. Any party wishing to participate as an amicus party in this litigation must first seek leave to do so by filing a motion with the Special Master and distributing copies of the motion to each of the attorneys on the Distribution List for the Distribution of Documents. The parties may file objections to such a motion.

(7) Posting of Docket and Case Management Orders. The Special Master will post on the internet, for public access, the docket sheets, all of his orders, and selected other documents. The address for access to these documents is:

http://www.law.gwu.edu/facweb/gmaggs/128orig/docket.htm

Dated: November 6, 2000

/s/

Gregory E. Maggs
Special Master
George Washington University
Law School
720 20th Street, N.W.
Washington, DC 20052
Tel. (202) 994-6031
Fax. (202) 994-5654

APPENDIX

Article 7 of the International Convention on the Territorial Sea and the Contiguous Zone, Sept. 10, 1964, 15 U.S.T. 1607, T.I.A.S. No. 5639, provides:

1. This article relates only to bays the coasts of which belong to a single State.

2. For the purposes of these articles, a bay is a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain land-locked waters and constitute more than a mere curvature of the coast. An indentation shall not, however, be regarded as a bay unless its area is as large as, or larger than, that of the semi-circle whose diameter is a line drawn across the mouth of that indentation.

3. For the purpose of measurement, the area of an indentation is that lying between the low-water mark around the shore of the indentation and a line joining the low-water marks of its natural entrance points. Where, because of the presence of islands, an indentation has more than one mouth, the semi- circle shall be drawn on a line as long as the sum total of the lengths of the lines across the different mouths. Islands within an indentation shall be included as if they were part of the water areas of the indentation.

4. If the distance between the low-water marks of the natural entrance points of a bay does not exceed twenty-four miles, a closing line may be drawn between these two low-water marks, and the waters enclosed thereby shall be considered as internal waters.

5. Where the distance between the low-water marks of the natural entrance points of a bay exceeds twenty-four miles, a straight baseline of twenty-four miles shall be drawn within the bay in such a manner as to enclose the maximum area of water that is possible with a line of that length.

6. The foregoing provisions shall not apply to so-called "historic" bays, or in any case where the straight baseline system provided for in article 4 is applied.